

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta
NOV 25 2024

**JAMES BUSSEY and
BRENDA SANDOVAL REY,
Plaintiffs,**

Civil Action No. 1:24-cv-4968
By:  KEVIN P. WEIMER, Clerk
Deputy Clerk

**vs.
MCCALLA RAYMER-LEIBERT
PIERCE, LLC and BRIANA TOOKES,
Defendants,**

**vs.
JAMES BUSSEY and BRENDA
SANDOVAL REY,
Plaintiffs,**

**vs.
FAIRWAY INDEPENDENT
MORTGAGE CORPORATION,
CHRIS SHUMATE, MCCALLA RAYMER-
LEIBERT PIERCE LLC C/O BRIANA TOOKES
Defendants.**

MOTION TO DISQUALIFY COUNSEL AND LAW FIRM

COMES NOW, Plaintiffs James Bussey and Brenda Sandoval Rey, proceeding pro se, and respectfully submits this Motion to Disqualify Attorney William O. Tate and the Law Firm of McCalla Raymer-Liebert Pierce due to their unethical conduct, violations of federal and Georgia

law and conflicts of interest. The conduct of Attorney William O. Tate and McCalla Raymer-Leibert Pierce violates the Fair Debt Collection Practices Act (FDCPA), the Truth in Lending Act (TILA), Georgia statutes, contractual obligations, and the Court's inherent authority to ensure the integrity of judicial proceedings. In support of this Motion, Plaintiff states as follows:

I. Introduction

This Motion seeks the immediate disqualification of Attorney William O. Tate, acting as both legal counsel and a debt collector and the entire law firm of McCalla Raymer-Liebert, Pierce, LLC due to their unethical conduct, in connection with fraudulent wire transfer documentation, misrepresentation of a bank transaction, and an unlawful mortgage sale, violations of federal and Georgia law, and conflicts of Interest. These actions including violations of the **FDCPA (15 U.S.C. § 1692e(3) and § 1692e(4))**, violations of **TILA (15 U.S.C. § 1601 et seq.)**, These actions, coupled with willful disregard for evidence provided by the Plaintiffs violates the Plaintiffs rights. To preserve the integrity of these proceedings, this Court must disqualify both the attorney and the law firm from continued representation.

II. Relevant Facts

1. On February 16, 2024, Rosemary Metz of Fairway Independent Mortgage Corporation confirmed via email that Plaintiff's mortgage, executed on March 6, 2023, was sold shortly thereafter to a debt collector, M & T Bank.

2. Under the FDCPA, it is illegal for a collection agency to purchase a debt and subsequently pursue collection activity (**15 U.S.C. § 1692f(1)**). Despite this, Defendant knowingly acted in violation of the FDCPA.

3. Plaintiff submitted a copy of this email as evidence to Defendant's counsel, Briana Tookes, demonstrating the unlawful nature of the mortgage sale. However, Defendant failed to take appropriate action, instead continuing to represent their client despite the clear violations.

4. Additionally, the Defendant's misrepresentation of their role as a legal authority and failure to disclose fraudulent documentation further underscores their noncompliance with federal and state law.

III. Violations of the Fair Debt Collection Practices Act (FDCPA)

1. False Representation of Attorney Involvement (§ 1692e(3))

Defendant Attorney William O. Tate, acting as a debt collector, falsely represented their authority and involvement in legal proceedings.

Communications sent to the Plaintiff implied that they were reviewed and authorized by an attorney, despite no substantive legal review occurring.

This constitutes a violation of **15 U.S.C. § 1692e(3)**.

• Case Law Support:

In *Heintz v. Jenkins*, 514 U.S. 291 (1995), the Supreme Court confirmed that attorneys engaging in debt collection activities are subject to the FDCPA and cannot misrepresent their involvement or legal authority.

2. False implications of Legal Consequences (§ 1692e(4))

Defendants also falsely implied that Plaintiff's failure to resolve the alleged debt would result in severe legal consequences, such as property seizure or garnishment, without the intent or legal basis to take such actions. This violates **15 U.S.C. § 1692e(4)**.

- **Case Law Support:**

In *Clark v. Capital Credit & Collection Services, Inc.*, 460 F.3d 1162 (9th Cir. 2006), the court emphasized that false threats of legal or financial consequences are prohibited under the FDCPA.

3. Illegal Collection Activity (§ 1692f(1))

The sale of the mortgage to a debt collector, followed by attempts to collect the debt, violates **15 U.S.C. § 1692f(1)**, which prohibits the collection of unauthorized debts.

IV. Violations of the Truth in Lending Act (TILA)

Under **TILA (15 U.S.C. § 1601 et seq.)**, lenders and those acting on their behalf must provide accurate and transparent disclosures regarding loan terms and transactions. Defendants' Briana Tookes, William O. Tate and McCalla Raymer-Liebert Pierce, LLC failed to identify or disclose fraudulent wire transfer documentation and misrepresented a bank transaction, violating Plaintiff's rights under TILA.

- **Case Law Support:**

In *Barrett v. JP Morgan Chase Bank, N.A.*, 445 F.3d 874 (6th Cir. 2006), the court highlighted that TILA violations involving failure to disclose or misrepresentation of financial transactions harm consumers and are actionable under federal law.

V. Violations of Georgia State Law

Under the **Georgia Rules of Professional Conduct**, attorneys are required to act with honesty and integrity and avoid conduct prejudicial to the administration of justice. Defendant's Attorney William O. Tate and McCalla Raymer-Leibert Pierce, LLC violated the following Georgia laws and rules:

1. Breach of Contract (O.C.G.A. § 13-6-1):

Defendant's sale of the mortgage violated the terms of the original agreement, causing financial and reputational harm to Plaintiff's.

2. Georgia Consumer Protection Act (O.C.G.A. § 10-1-390 et seq.)

The Act prohibits unfair or deceptive acts in trade or commerce.

Misrepresentation of debt-related transactions and the use of fraudulent documentation are clear violations.

3. Georgia Rules of Professional Conduct:

- **Rule 1.7:** Prohibits conflicts of interest that adversely affect client representation.
- **Rule 8.4(a)(4):** Prohibits conduct involving dishonesty, fraud, deceit, or misrepresentation.

- **Case Law Support:**

In *Cox v. Athens Reg. Med. Ctr., Inc.*, 279 Ga. App. 586, 631 S.E.2d 792 (2006), the Georgia Court of Appeals emphasized that deceptive practices violating consumer protection laws warrant judicial scrutiny and corrective action.

VI. Grounds for Disqualification of the Entire Law Firm

The misconduct of Defendant William O. Tate extends to the entire law firm of McCalla Raymer-Leibert Pierce, LLC under the following doctrines:

1. Vicarious Liability: The law firm is responsible for the unethical actions of its attorney, as these actions occurred within the scope of employment and representation.

2. Taint Doctrine: The attorney's misconduct has tainted the proceedings, rendering the firm incapable of continuing its representation without undermining the fairness of the judicial process.

3. Conflict of Interest: The firm's continued representation creates a conflict of interest that prejudices the Plaintiff and compromises the integrity of the case.

- **Case Law Support:**

In *Kasis v. Teacher's Ins. & Annuity Ass'n*, 93 N.Y.2d 611 (1999), the court disqualified a law firm due to a conflict of interest and unethical conduct that affected the integrity of the proceedings.

VII. Relief Sought

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Disqualify Defendant Briana Tookes, Attorney William O. Tate and McCalla Raymer-Leibert Pierce, LLC from representing James Bussey and Brenda Sandoval Rey in this case.
 2. Award Plaintiff damages as detailed in the fee schedule and the amended attached complaint for damages.
 3. Award compensatory and punitive damages for violations of TILA and fraudulent misrepresentation.
 4. Impose sanctions against Attorney William O. Tate and McCalla Raymer-Leibert Pierce, LLC for their unethical conduct.
 5. Grant such other relief as the Court deems just and proper.
-

VIII. Fee Schedule for Claims and Damages

Claim	Relevant Statute or Law	Damages Sought
FDCPA § 1692e(3)	15 U.S.C. § 1692e(3)	\$1,000 statutory damages for false representation of attorney involvement.
FDCPA § 1692e(4)	15 U.S.C. § 1692e(4)	\$1,000 statutory damages for false implications of legal consequences.
FDCPA § 1692f(1)	15 U.S.C. § 1692f(1)	\$1,000 statutory damages for illegal collection activity.
TILA Violation	15 U.S.C. § 1601 et seq.	\$25,000 for financial loss, credit damage, and statutory violations.
Fraudulent Misrepresentation	Georgia Common Law	\$50,000 in compensatory damages and \$150,000 in punitive damages for willful fraud.
Georgia Consumer Protection Act	O.C.G.A. § 10-1-390 et seq.	\$10,000 compensatory, trebled to \$30,000 for willful violations.
Breach of Contract	O.C.G.A. § 13-6-1	\$50,000 for financial loss and reputational damage caused by the breach.

Total Damages Sought: \$313,000

IX. Supporting Evidence

Exhibit No.	Description
Exhibit 1	Email from Rosemary Metz confirming sale of the mortgage to M & T Bank.
Exhibit 2	Documentation of the mortgage transaction and sale to M & T Bank.
Exhibit 3	Email to Defendant's counsel regarding the unlawful mortgage sale.
Exhibit 4	Credit report showing damage caused by these actions.
Exhibit 5	Original mortgage agreement demonstrating terms breached by the sale.

Certificate of Service

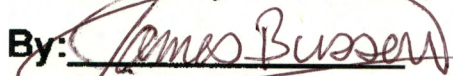
I hereby certify that on this 25th day of November 2024, I have served a true and correct copy of the foregoing **Motion to Disqualify Counsel and Law Firm** Defendants Briana Tookes, William O. Tate and McCalla Raymer Leibert Pierce, LLC 1544 Old Alabama Road, Roswell, GA 30076.

I further certify that on this 25th day of November 2024, a copy of this Motion was filed with the Clerk of Court for the United States District Court for the Northern District of Georgia, Atlanta Division, in accordance with the Court's rules and procedures.

November 25th 2024

Respectfully submitted,

By:



James Bussey

455 Liberty Trace

Roswell, Georgia 30076

404-993-3925

JamesBussey72@yahoo.com



RE: LEGAL DEPT DEBT VALIDATION Loan # 4002218982

From: Rosemary Metz (rosemary.metz@fairwaymc.com)

To: jamesbussey72@yahoo.com

Date: Friday, February 16, 2024 at 06:45 PM EST

Good morning,

Here is a record of the two wires that Fairway sent to the closing agent for the closing of your mortgage loan. Only the amount that gets distributed by the closing agent is wired, which was \$355,769.66.

Comments:

Confirmation Wire History:

03/06/2023 11:51 AM	jennifer.tessmer	Additional Wire	1,529.55	Escrows	N/A
03/03/2023 10:16 AM	bcarroll	Original Wire Amount	354,240.11	N/A	N/A

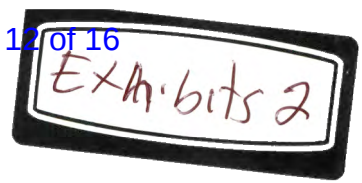
Total Wire Amount: 355,769.66

Wire Transfer Amount: 355,769.66

I previously sent you a copy of the Note and there is nothing further I can provide to you from an accounting standpoint as we sold this loan shortly after it closed and took no payments from you.

Thank you and enjoy your weekend.

Rosemary Metz
Corporate Counsel
Fairway Independent Mortgage Corporation
469-200-4180
Rosemary.metz@fairwaymc.com



currently residing at
2100 WHITESTONE PL, ALPHARETTA, GEORGIA 30005

Borrower is the grantor under this Security Instrument.

(B) "Lender" is
FAIRWAY INDEPENDENT MORTGAGE CORPORATION

Lender is a CORPORATION organized and
existing under the laws of THE STATE OF TEXAS Lender's address is
4201 MARSH LANE, CARROLLTON, TX 75007
The term "Lender" includes any successors and assigns of Lender.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2028, Flint, MI 48501-2028, tel. (888) 679-MERS.

Documents

(D) "Note" means the promissory note dated MARCH 06, 2023, and signed by each Borrower who is legally obligated for the debt under that promissory note, that is in either (i) paper form, using Borrower's written pen and ink signature, or (ii) electronic form, using Borrower's adopted Electronic Signature in accordance with the UETA or E-SIGN, as applicable. The Note evidences the legal obligation of each Borrower who signed the Note to pay Lender THREE HUNDRED SIXTY ONE THOUSAND & NO/100

Dollars (U.S. \$361,000.00) plus interest. Each Borrower who signed the Note has promised to pay this debt in regular monthly payments and to pay the debt in full not later than APRIL 01, 2053.

(E) "Riders" means all Riders to this Security Instrument that are signed by Borrower. All such Riders are incorporated into and deemed to be a part of this Security Instrument. The following Riders are to be signed by Borrower [check box as applicable]:

- | | |
|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider |
| <input type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Planned Unit Development Rider |
| <input type="checkbox"/> Second Home Rider | <input type="checkbox"/> VA Rider |
| <input checked="" type="checkbox"/> Other(s) [specify] GEORGIA ACKNOWLEDGEMENT OF BORROWER'S RIGHTS RIDER | |

(F) "Security Instrument" means this document, which is dated MARCH 06, 2023 together with all Riders to this document.

Additional Definitions

(G) "Applicable Law" means all controlling applicable federal, state, and local statutes, regulations, ordinances, and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.





Subserved by M&T Bank

April 7, 2023

8-750-44823-0000157-001-1-010-010-000-000
 JAMES LEE BUSSEY
 BRENDA SANDOVAL-REY
 455 LIBERTY TRCE
 ROSWELL GA 30076-1776

REPRESENTATION OF PRINTED DOCUMENT



Welcome!

Your mortgage servicing
 company has changed to M&T.

See details below.

Your new mortgage account number is: 4002218982

Dear James Lee Bussey and Brenda Sandoval-Rey:

Welcome to M&T! Effective with your May 1, 2023 payment, Fairway Independent Mortgage Corporation will transfer the servicing of your mortgage to Lakeview Loan Servicing, LLC, who in turn chose M&T to provide the day-to-day servicing of your mortgage on its behalf. We look forward to working with you to protect the important financial asset that is your home.

How does this change affect me?

The terms of your mortgage remain the same. If you have been making mortgage payments automatically through an online banking service or other provider, you will need to update the payee information. We've included a payment coupon below for your May 1, 2023 payment. If you have a payment due prior to May 1, 2023 please remit it to Fairway.

You can automatically deduct (ACH) your monthly payment from the account of your choice through M&T. Below are options we offer for ACH enrollment:

- Enroll in M&T Online Banking at onlinebanking.mtb.com
- Call 1-866-820-1668 to request an Automatic Payment Enrollment form be mailed to you

If you do not enroll in ACH, please use the payment coupon provided with your monthly billing statements when making your payments.

If you prefer to pay on a weekly, bi-weekly or semi-monthly schedule, go to mtb.com/achenroll to enroll in M&T's Flexible payment service.

Who is M&T?

For more than 160 years, M&T has helped people and businesses manage their money and make sound financial decisions, so they can live better today and realize their goals for tomorrow. In addition to being one of the 20 largest independent holding companies in the U.S., we have consistently demonstrated our commitment to our customers and the communities we serve. You'll also have the confidence of working with one of the nation's most financially secure banking institutions. To learn more about M&T, visit us at mtb.com and click on "About M&T".

*(over, please)***ONE-TIME PAYMENT COUPON**

4002218982 0287158 0287158

Please make your check payable to M&T Bank.

Enclose your check in the envelope provided or mail it to:

M&T BANK
 PO BOX 62182
 BALTIMORE, MD 21264-2182

LOAN NUMBER	DUE DATE	TOTAL PAYMENT
4002218982	05/01/2023	\$2,871.58

⑆5730⑈0000⑆

4002218982⑈

Personal Credit Report for:
JAMES BUSSEY

Exhibit 4

File Number:
352525648

Date Created:
11/23/2024

Visit transunion.com/dispute to start a dispute online.

If you are experiencing a financial hardship related to a public health emergency or your personal circumstances, you can add a consumer statement to your credit file to explain your situation by visiting us at www.transunion.com/credit-help.

Personal Information

You have been on our files since 05/01/1995. Your SSN has been masked for your protection.

Credit Report Date

11/23/2024

Social Security Number

XXX-XX-7965

Date of Birth

04/30/1972

Name

JAMES LEE BUSSEY

Also Known As

AKA

JAMES MARIANA BUSSEY

AKA

JAMES LEE BUSSEY

Addresses

Current Address

455 LIBERTY TRCE ROSWELL, GA 30076-1776

Adverse information typically remains on your credit file for up to 7 years from the date of the delinquency. To help you understand what is generally considered adverse, we have added >brackets< to those items in this report. For your protection, your account numbers have been partially masked, and in some cases scrambled.

Account Name	Account Number	Balance	Monthly Payment
BOMBARDIER/CBNA	603543132271****	\$2,526	\$183
DELTA COMMUNITY CU	118125666****	\$9,015	\$262
DELTA COMMUNITY CU	118125666****	\$53,909	\$869
M & T BANK	738400221****	\$382,492	\$2,871
SYNCB/PPC	604419216386****	\$2,044	---



Satisfactory Accounts

The following accounts are reported with no adverse information. For your protection, your account numbers have been partially masked, and in some cases scrambled. Please note: Accounts are reported as "Current; Paid or paying as agreed" if paid within 30 days of the due date. Accounts reported as Current may still incur late fees or interest charges if not paid on or before the due date.

Account Name	Account Number	Balance	Monthly Payment
BANK OF AMERICA	440066336092****	\$0	---
DELTA COMMUNITY CU	116626224****	\$10,197	\$193
DELTA COMMUNITY CU	118125666****	\$21,660	\$591
DELTA COMMUNITY CU	118125666****	\$0	\$0
DELTA COMMUNITY CU	116626224****	\$0	\$0
DELTA COMMUNITY CU	116626224****	\$0	\$0
DELTA COMMUNITY CU	116626224****	\$0	\$0
SYNCB/MUSICIAN'S FRIENDS	602052290335****	\$0	---

Inquiries

Promotional Inquiries

The companies listed below received your name, address and other limited information about you so they could make a firm offer of credit or insurance. They did not receive your full credit report. These inquiries are not seen by anyone but you and do not affect your score.

Name	Requested On
GRANITE BAY ACCEPTANCE C	09/30/2024, 08/27/2024, 07/30/2024, 06/11/2024
ONE CAPITAL LENDING	09/29/2024
TAB/MISSION LANE	09/22/2024
IR/ROCKETSHIP FINANCIAL CORP.	08/26/2024, 07/01/2024, 06/05/2024
IR/SMART MONEY CAPITAL	08/21/2024, 07/31/2024

